Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Blanca Telephone Company	)	**CC Docket 96-45**
	)	
Seeking Relief From the June 2, 2016	)	
Letter Issued by the Deputy Managing	)	
Director Which Seeks to Enforce an	)	
Interpretation of the Commission's Rules	)	
Regarding the Use of USF High Cost	)	
Funding for the Purpose of Operating a	)	
Rural Mobile Cellular Telephone System	)	
During the 2005-2010 Time Period	)	

To: The Secretary
For Distribution to the Commissioners

CORRECTED CLEAN COPY
PETITION FOR RECONSIDERATION
AND EMERGENCY REQUEST FOR IMMEDIATE § 1.1910(b)(3)(i) RELIEF

Blanca Telephone Company
Timothy E. Welch, Esq.
Hill and Welch
1116 Heartfields Drive
Silver Spring, MD 20904
(202) 321-1448
(301) 622-2864 (FAX)
welchlaw@earthlink.net
January 7, 2018

Table of Contents

Summary

The administrative process is a two sided coin: On one side of the coin Federal agencies such as the FCC are required to engage in reasoned decision making. This requires the agency to give clear notice about requirements and to discuss important matters and the reasoned decision making requirement precludes the FCC from reaching decisions which are not supported by the record or which are not adequately explained. On the other side of the coin Blanca, as the regulated entity, is required to exhaust its administrative remedies. Exhaustion of administrative remedies does not require Blanca to guess beforehand what the agency might determine is a requirement sometime in the future, the FCC is required to provide reasoned notice in advance of the enforcement of its requirements. The exhaustion requirement allows Blanca to comment upon, and object to, statements the FCC makes which can serve as rationale in Blanca's case, especially if the FCC's statements are made after the reconsideration deadline has passed.

The December 8 Order explains that Blanca's Due Process rights were not violated even though Blanca was not afforded any notice of the possibility that the FCC would reach back years to examine its accounting and summarily determine that there were accounting rule violations; and even though Blanca was not afforded an opportunity to defend itself before the FCC reached factual and legal conclusions. Blanca is entitled to a fair hearing procedure in which Blanca is allowed to inform the decision maker before the ultimate decision is made. The opportunity to try to reverse an already predetermined decision on review is not remotely the same thing.

The December 8 Order ¶ 19 acknowledges this significant problem with the FCC's approach by attempting to transform the staff's June 2, 2016 "**DEMAND FOR PAYMENT OF A DEBT OWED TO THE UNITED STATES AND ORDER OF PAYMENT** (bold, caps, underscore in

original) into a notice of "proposed debt" payable to the FCC and which tries, but fails, to comply with procedural requirements. While "a rose by any other name would smell as sweet," it would still have thorns, and changing the name of the June 2 Letter does not change the nature of that document, it remains an *ex parte* summary forfeiture order.

Blanca asserts the protection afforded by 47 C.F.R. § 1.1910(b)(3)(i) and seeks to have its applications processed and debt collection forestalled during litigation regarding the existence of the purported "proposed debt" or "pre-existing debt" or "proposed pre-existing debt" as the FCC may determine to be the case. This relief should be provided immediately.

This document is a clean version compiling the two Errata and Blanca's December 29, 2017 Petition for Reconsideration.

The Blanca Telephone Company (Blanca), by its attorney, pursuant to §§ 1.106(a)(1), (b)(1),(2), (c)(1),(2), (d)(2), (f), and § 1.115(g), hereby seeks reconsideration of the FCC's December 8, 2017 *Memorandum Opinion and Order*, FCC 17-162, released December 8, 2017 (December 8 Order).[1] In support whereof, the following is respectfully submitted:

A. The APA's Reasoned Decision Making Requirement

With all due respect the December 8 Order misapprehends and misapplies basic Federal administrative procedure requirements. December 8 Order ¶ 29 states that

> Blanca's assertion in its First Supplement—that two NALs and the Commission's Writ Opposition filed with the D.C. Circuit constitute changes in the law or in the Commission's interpretation of the law—is specious. The Commission's analysis of the relevant legal issues was based on longstanding precedent and principles that Blanca had ample opportunity to review and incorporate into its timely filed Application and Petition. For example, the legal position that the collection of debt is not a forfeiture barred by the passage of time, as raised in the two NALs cited by Blanca and issued after the issuance of the OMD Letter, is expressly is based on long-standing precedent, including 1938 and 1946 decisions by the U.S. Supreme Court and orders by the Commission and the WCB released in 2011 and 2014, respectively, establishing that the denial of funding is not a forfeiture action and the statute of limitations in section 503 of the Act is therefore inapplicable to the recovery of government funds improperly paid. Likewise, the applicability of the DCIA to the recovery of federal debts is supported by precedent almost 30 years old and did not involve any new interpretation of the relevant law.

1. Reasoned Decision Making is an Agency Obligation

It is not the public's burden to guess what rule or statutory interpretation the FCC might promulgate in the future. It is the FCC's obligation to explain its reasoning for its actions. In administrative law parlance, an agency is required to engage in reasoned decision making. *United States Telecomms. Ass'n v. FCC*, 825 F.3d 674, 707 (D.C. Cir. 2016). However, rather than point to the FCC's own reasoned decision making, the December 8 Order ¶ 29 retroactively imposes the burden upon Blanca in 2005 to guess what the FCC was going say in 2016/2017 regarding USF rule

---

[1] Collectively, the December 8 Order and the staff's June 2, 2016 Letter forfeiture order are referred to herein as the "FCC Orders."

violation proceedings based upon what the FCC might subsequently view as "long-standing" Supreme Court precedent. Moreover, as discussed more fully below, the FCC holds Blanca to comply with a vague "cost accounting framework" which contradicts expressly stated USF rules. December 8 Order ¶ 48. Reasoned decision making is the agency's obligation, Blanca's obligation in this administrative proceeding is to exhaust its administrative remedies, not divine FCC policy before it is announced.

2. Reasoned Decision Making Requires Discussion of Important Issues

The FCC must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Communications and Control, Inc. v. FCC*, 374 F.3d 1329, 1335 (D.C. Cir. 2004) (internal quotes omitted); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."); *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962); *Metro Mobile Communications, Inc. v. FCC*, 365 F.3d 38, 43 (D.C. Cir. 2004); *Achernar Broadcasting Co. v. FCC*, 62 F.3d 1441, 1445 (D.C. Cir. 1995); *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (reversal when agency fails to provide a reasoned explanation and when the record is contrary to the agency's conclusion). The FCC's interpretation of its regulations is entitled to deference unless plainly erroneous or inconsistent with the regulation. *S.A. Storer & Sons Co. v. Sec'y of Labor*, 360 F.3d 1363, 1368 (D.C. Cir. 2004). Discussed below are numerous instances of significant FCC failures to provide reasoning or consider record evidence.

3. Blanca's Obligation to Exhaust Administrative Remedies

The December 8 Order ¶ 29 states that it is improper for Blanca to comment upon the FCC's legal position after the Commission announces its position. The FCC would have Blanca sit quietly while the FCC issued relevant determinations regarding the FCC's view of USF rule violations and associated proceedings. However, Blanca is required to raise arguments at the FCC before it can raise them on review in an appeals court. *Environmentel, LLC v. FCC*, 661 F.3d 80, 83-84 (D.C. Cir. 2011). The exhaustion requirement is not optional on Blanca's part, it is mandatory and the consequences of failing to exhaust are harsh, including loss of appellate litigation rights. A party exhausting its remedies before an administrative agency in good faith is not required to guess beforehand whether the agency might find a review petition repetitious. *Southwestern Bell Telephone Company v. FCC*, 116 F.3d 593, 597-98 (D.C. Cir. 1997).

If the FCC means to provide Blanca with a waiver of the exhaustion requirement via the December 8 Order ¶ 29, then it should clearly state the waiver because an exhaustion waiver is not something a regulated entity can infer. Blanca would gladly accept a clear statement from the FCC that the FCC is waiving the exhaustion requirement. However, because such a waiver would put the FCC in a bind during appellate litigation,[2] Blanca cannot assume that the FCC means to waive the exhaustion requirement. Because the FCC is not likely waiving the exhaustion requirement, it is unclear why the December 8 Order ¶ 29 instructs Blanca that it cannot comment on relevant FCC statements and rulings in real time as the FCC makes them and the FCC's view is unreasoned.

---

[2] Reviewing courts must rely upon the FCC's statements contained in its orders and rationale cannot be supplied by FCC counsel in argument to the court. *See Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("The reviewing court should not attempt itself to make up for such deficiencies: We may not supply a reasoned basis for the agency's action that the agency itself has not given."); *Panamsat Corporation v. FCC*, 198 F.3d 890, 897 (D.C. Cir. 1999) ("we do not ordinarily consider agency reasoning that 'appears nowhere in the [agency's] order'") quoting *Graceba Total Communications, Inc. v. FCC*, 115 F.3d 1038, 1041 (D.C. Cir. 1997).

B. A Case of First Impression and Lack of Notice

One of Blanca's central arguments is that the FCC's action in this case employed a novel *ex parte* summary enforcement procedure which failed to follow the Notice of Apparent Liability requirements found at 47 U.S.C. § 503, 47 C.F.R. § 1.80, and 47 C.F.R. §1.1905. *See e.g.*, June 24, 2016 Petition for Reconsideration at 3, 7-8 & n. 4. Blanca had no prior notice of the *ex parte* summary debt adjudication and collection procedure used in this case, no notice of how to proceed in such a proceeding, no notice that the FCC could find USF rule violations years and years after the occurrence of the purported USF rule violations, and no notice that the FCC could issue a forfeiture based upon those ancient rule violation determinations. "Elementary fairness compels clarity in the statements and regulations setting forth the actions with which the agency expects the public to comply." *Gen. Elec. Co. v. United States EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995) *citing Radio Athens, Inc. v. FCC*, 401 F.2d 398 (D.C. Cir. 1968).

The FCC tries to justify the lack of notice by asserting that prior to the release of the December 8 Order there existed precedent from which Blanca could have ascertained what the FCC would do in the FCC Orders, but the December 8 Order, ¶ 29, merely serves to highlight the lack of notice endemic to this case. The December 8 Order does not describe an existing procedure which the FCC employed prior to 2005-2010 from which Blanca could glean probable FCC action. December 8 Order, ¶ 29 determines that as of 2005 Blanca should have figured out what the FCC would do in 2016 based upon two 70-80 year old Supreme Court cases as informed by FCC determinations made in 2011 & 2014 which were released after Blanca's 2005-2010 challenged conduct.

This is not reasoned decision making. First, FCC decisions issued in 2011 and 2014 were issued after the occurrence of Blanca's challenged 2005-2010 conduct and obviously did not inform anyone of anything during the period of time before they were issued. Second, expecting the public to consider every existing appellate precedent, and then divining how the FCC will apply certain of those precedent, but not others, in some future decision is not the agency providing clarity in guidance, it is a regulated entity guessing at what unannounced FCC rules might be.

47 U.S.C. § 503(b)(2)(B), implemented at 47 C.F.R. § 1.80, is the statutory procedure whereby the FCC determines whether its rules have been violated and whether forfeitures should be entered against carriers. 47 C.F.R. § 1.1905 explicitly provides that forfeiture orders entered against carriers, subsequently to be classified as Federal debt, must comply with the requirements of § 503 and § 1.80. June 24, 2016 Petition for Reconsideration, at 14. The FCC's statutory, and routine, method for entering USF rule violation findings and collecting USF debt is to issue a notice of apparent liability pursuant to § 503 and § 1.80. June 24, 2016 Petition for Reconsideration, at 16. The FCC even provides a notice of apparent liability in cases involving serious fraud.[3]

The FCC seeks to avoid the statutorily required rule violation procedure by claiming that

> section 503 forfeiture proceedings are not the exclusive means by and through which the Commission may make a determination that a rule has been violated and impose liability. The Commission or USAC has consistently sought recovery of USF funds outside of section 503 proceedings.

December 8 Order, ¶ 43. The FCC continues to explain that it in addition to § 503 rule violation proceedings, the FCC can conduct audits to enforce its rules. December 8 Order, ¶ 39, nn. 106, 122.

However, Blanca settled its audit years ago by returning USF money and adjusting its accounting procedures and Blanca's rural cellular system withered on the vine. June 24, 2016

---

[3] *In the Matter of Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee, Notice of Apparent Liability for Forfeiture and Order*, FCC 16-165 (imposing a $49+ million forfeiture for falsely certifying the accuracy of the USF data provided to the Commission/NECA during the years 2010-2013 (¶¶ 46-47, 55, 59, 79, 81)). The Commission's December 6, 2016 *Daily Digest*, Vol. 35 No. 234 states that "Sandwich Isles Communications must repay the USF and may pay fines totaling over $76 million for apparent violations related to USF compensation." This decision was released after the June 2 Letter was issued against Blanca.

Petition for Reconsideration, at 12-13, 14, 15 n. 16.[4] While the FCC has a choice between audit and rule violation adjudication, Blanca's audit was closed years ago. The December 8 Order fails to discuss this important fact and is unreasoned as a result. Moreover, the FCC acknowledges that this proceeding is not an audit, the FCC refers to this review proceeding as an "informal adjudication" in which the FCC is "applying current laws to past conduct." December 8 Order ¶ 42.[5] The FCC's procedures for adjudicating rule violations regarding past conduct are found at § 503 of the FCA and § 1.80 of the rules. Moreover, to the extent the FCC is applying newly created agency law to Blanca's past conduct, the FCC is engaging in retroactive rule making because it would be "attach[ing] new legal consequences to events completed before its enactment" as guided by "familiar considerations of fair notice, reasonable reliance, and settled expectations." *Landgraf v. Usi Film Products*, 511 U.S. 244, 255 (1994).

The indispensability of the rules adjudication to the FCC's debt creation/collection position is readily apparent by viewing the June 2 Letter as if the rule violation text were excised from the order. Absent the rule violation text, the June 2 Letter would effectively state that "Blanca owes the government money for no reason in particular," a wholly unreasoned proposition. This case is not an accounting audit, this case is a rule adjudication proceeding in which the FCC has failed to follow its long established rule violation adjudication procedures including § 503's one year statute of

---

[4] There are no rule violation findings entered after an audit is settled. The audit period is limited, it is not an open-ended. June 2 Letter at 2 (acknowledging an audit time limitation); June 24, 2016 Petition for Reconsideration, at 15 (one year limitation); 47 C.F.R. § 54.701(a) (FCC review of auditing results limited to one year). The auditing procedure the FCC discusses was concluded for Blanca years ago and the December 8 Order is unreasoned for failing to discuss the fact.

[5] The FCC must explain how the June 2 Letter can be considered an informal adjudication when the face of the document asserts that it is a **<u>DEMAND FOR PAYMENT OF A DEBT OWED TO THE UNITED STATES AND ORDER OF PAYMENT</u>** (bold, caps, underscore in original) and where Blanca was not provided any opportunity to present a case before issuance of the ultimate decision. If this case is an informal adjudication, it represents a classic case of Due Process violating prejudgment.

limitations.

The December 8 Order ¶ 39 states that this proceeding is a "debt adjudication." There is nothing in the FCC rules which authorizes "debt adjudications." Moreover, the FCC's statement implicitly recognizes that it is not merely collecting a debt, it is adjudicating a debt claim and creating the existence of a debt. Prior to June 2, 2016 there was no debt and this proceeding is not merely a "debt collection" action. June 24, 2016 Petition for Reconsideration, at 17-18. The FCC states that there is no statute of limitations issue regarding debt collection under the DCIA, December 8 Order n. 78, however, since this case is not merely a debt collection proceeding to collect an existing debt, the DCIA limitations exception does not apply. June 24, 2016 Petition for Reconsideration, at 16.

December 8 Order ¶ 31 states that "this is not a forfeiture proceeding," yet the December 8 Order requires Blanca to forfeit nearly $7 million of its own money as a consequence of the summarily adjudicated rule violations. If this is not a forfeiture proceeding, then one can only wonder why the FCC adjudicated USF rule violations. The FCC's determination that this is not a forfeiture proceeding is unreasoned.

December 8 Order ¶ 45 asserts that the Commission is not penalizing Blanca because it is "merely seeking to recover sums improperly paid in which Blanca held no entitlement under section 254." The FCC's statement is factually incorrect. Attachment at 00001 is a copy of the FCC Form 159-B which the FCC has prepared for Blanca to pay the forfeiture which shows that the FCC is extracting an interest penalty (DCIA), a generic penalty (PEN), and administrative charges. These are clearly penalties under anyone's definition of a penalty. Moreover, the imposition of any penalty at this time is improper if the June 2 Letter were merely a "proposed debt." December 8 Order ¶ 19. A debt is not considered delinquent if the existence of the debt is challenged. 47 C.F.R. § 1.1910(b)(3)(i). Moreover, the Commission will not attempt debt collection while the existence of the debt is litigated. 47 C.F.R. §§ 1.1910(b)(2), (3)(i).

The FCC needs to decide: was the June 2 Letter notice of a pre-existing debt, or was the June 2 Letter an informal, albeit summary, adjudication of a debt claim, or was the June 2 Letter a notice of a proposed debt which triggered an ongoing debt adjudication which attempts, but fails, to provide Blanca with procedural relief? The June 2 Letter cannot be at the same time 1) a demand for payment of a pre-existing debt which triggered penalties; 2) an "informal adjudication" of a debt claim; and 3) a mere "proposed debt" in the form of a notice of proposed liability for forfeiture.

Regarding the FCC's assertion that Blanca is not "entitled" to the USF money, December 8 Order ¶¶ 2, 24, 25, 36-38, 45, 51 & nn. 28, 41, 90, 108, 109, 123, 148, title to the USF money properly passed to Blanca years ago in light of Blanca's "clean hands." December 8 Order ¶ 41. Because Blanca obtained legal title to the USF money, assertion of a debt recovery procedure against Blanca is improper and is at odds with the underlying "debt" collection purpose of the Debt Control Improvement Act of 1996 (DCIA). The USF money became Blanca's property years ago, that money is not a "debt" owed by Blanca to the Federal government. Blanca had no reason to believe that it was not entitled to the USF money, and because Blanca has clean hands, the payment of USF money to Blanca became final and Blanca changed its position in reliance upon a reasonable belief that the money was properly paid. *Norwest Bank Minn. Nat'l Ass'n v. FDIC*, 312 F.3d 447, 452 (D.C. Cir. 2002) (repose allows parties to a transaction to close their books).

The FCC must explain more fully the purpose served by its informal adjudication of purported USF rule violations in this "informal adjudication." Alternatively, the FCC could delete the rule violation findings entered in this proceeding and either: 1) assert that the money is owed to the Federal government because that's just the way it is; thereafter we can check with an appeals court to see if the FCC can assert a debt claim without having a reason to do so or 2) the FCC could try to develop another debt creation theory which does not rely upon rule violations to justify taking

Blanca's money and Blanca will address that new theory after it is released.

The fact is, the FCC cannot point to a single pre-2005 or a pre-2010 FCC decision, adjudication, or rule making which provides clear notice that: the FCC will employ an *ex parte* summary USF rule violation and debt collection procedure, ignore the FCA's one year statute of limitations, and issue a forfeiture based upon those ancient rule violation determinations. The patchwork explanation in December 8 Order ¶ 29 tries to explain what it is doing to Blanca, but that explanation merely serves to highlight that the FCC is weaving a novel, generally applicable USF enforcement procedure out of whole cloth, on the fly and without notice, in this proceeding. The FCC's decision to implement a new *ex parte* summary enforcement procedure to process its USF rule violation claims against Blanca, without prior notice, violates "basic hornbook law in the administrative context." *Gen. Elec. Co. v. United States EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995).

C. Blanca's Due Process Rights

December 8 Order ¶ 47 states that

> The Commission processes have afforded Blanca sufficient due process. Informal adjudications should provide notice to affected parties, opportunity to participate, and supporting reasons.

The June 2 Letter was not an "informal adjudication," it was an *ex parte* summary forfeiture order which "demanded" immediate payment to the U.S. Treasury of a purported Federal debt upon pain of additional penalties. There was no "adjudication" because Blanca was not afforded an opportunity to present a case before the ultimate decision was made. Blanca was presented with a *fait accompli* and the burden was placed upon Blanca to overturn that decision on appeal. That's not due process, that's being ridden out of town on a rail. If the Commission means to say that the June 2 Letter served as a notice of apparent liability as part of an effort to collect money for rule violations, then there is a statute of limitations problem with the FCC's position.

47 C.F.R. § 1.1905 requires that the FCC follow the procedures found at § 503 of the FCA

and § 1.80 of the rules in debt collections before forfeiture penalties can be imposed. Blanca has a 5th Amendment right to a hearing before being deprived of its property. December 8 Order ¶ 29 states "that the collection of debt is not a forfeiture barred by the passage of time" and that the FCC is authorized to collect "Federal funds" from Blanca because, in the FCC's view, Blanca is not "entitled" to the money. December 8 Order ¶¶ 2, 24, 25, 36-38, 45, 51 & nn. 28, 41, 90, 108, 109, 123, 148. However, the monies the FCC seeks to collect from Blanca are not Federal funds. Blanca had no reason to believe that it was not entitled to the USF money. Therefore, the payment of USF money to Blanca became final and title to the money passed to Blanca. *Norwest Bank Minn. Nat'l Ass'n v. FDIC*, 312 F.3d 447, 452 (D.C. Cir. 2002) (repose allows parties to a transaction to close their books). The FCC is trying to obtain Blanca's money from Blanca, the FCC's action is not one which is recovering Federal funds. The FCC proceeding via forfeiture, this is not a debt collection.

D. Regulated v. Unregulated Costs

The central topic of the June 2 Letter's attempt to penalize Blanca for purported ancient accounting violations was the assertion that Blanca obtained USF funding for a mobile service and that mobile services are not eligible for USF funding. June 24, 2016 Petition for Reconsideration at 22-23 & n. 18. However, that rationale is plainly wrong because in addition to various rules which indicate that mobile service is eligible for USF funding, June 24 Petition for Reconsideration at 4-5, 6, 17, the FCC issued the October 19, 2015 *Public Notice*, FCC 15-133, which plainly states that USF funding is available for mobile service. June 24, 2016 Petition for Reconsideration at 23.

The December 8 Order seems to abandon the staff's rationale that "mobile" service is excluded from USF funding, *sub silentio*, in favor of a "regulated v. unregulated" view of the USF funding requirement. The December 8 Order makes the point that only "regulated" services are eligible to receive USF funding at least 69 times and serves as the FCC's new central rationale to find that Blanca violated USF funding rules years ago.[6] The FCC's "regulated v. unregulated" rationale is as unreasoned as the staff's "mobile" rationale.

First, the FCC ignores the fact that Blanca is a regulated common carrier of last resort providing local exchange service pursuant to tariff in Southern Colorado and that Blanca offered its wireless service as a regulated service under its tariff.[7] June 24, 2016 Petition for Reconsideration, at 1-3, 5, 11 & n. 10; *see also* Blanca's Response 34 to the IG's November 12, 2009 *Subpoena* (Blanca provided its wireless services under tariff). Attachment at 00002.[8] Blanca used its wireless service to provide carrier of last resort services to hard to serve areas which was more economical USF funding-wise than laying wire. June 24, 2016 Petition for Reconsideration at 11; June 2 Letter at 6; *see also* June 2 Letter n. 16 (Blanca served 150 exchange subscribers using wireless technology because it was not feasible to install landline service). As a common carrier Blanca was required to offer its wireless service indiscriminately, 47 U.S.C. § 202 (requirement of nondiscrimination), but that does not change the fact that Blanca properly accounted for its cellular system costs as a

---

[6] The December 8 Order refers to "mobile" only 8 times in a 22 page order where the June 2 Letter referred to "mobile" 27 times in a 6+ page order.

[7] While States are preempted from regulating the rates charged for mobile services, there is nothing in the Communications Act or the FCC's rules which prohibits a carrier of last resort from regulating its own rates by offering cellular service under its state tariff. *See* June 24, 2016 Petition for Reconsideration at 14 n. 15 citing 47 U.S.C. § 332(c)(3); *see also* 47 C.F.R. § 20.15(c) (ordering cancellation of interstate and international mobile service tariffs, but not state tariffs). The Colorado PUC authorizes wireless provision of carrier of last resort services. 4 C.C.R. 723-2 § 2001(a) ("'Access line' means the connection of a customer's premises to the public switched telephone network regardless of the type of technology used to connect the customer to the network."); *see also* 4 C.C.R. 723-2 § 2821(a) (similar); 4 C.C.R. 723-2 § 2185 (providers of last resort must provide service "regardless of the availability of facilities").

[8] December 8 Order ¶ 49 denies Blanca the opportunity to examine the evidence before the FCC because Blanca produced the information. This ruling ignores 47 C.F.R. § 1.10 which explicitly provides that Blanca has a "right . . . to procure a copy of any document submitted by" Blanca. The attached copies of Blanca's Item 34 response, the 1988 US Letter, and Blanca's Item 2 response is the best evidence available to Blanca.

regulated service.

Second, in addition to being wrong as a factual matter regarding whether Blanca's cellular service was regulated, the FCC is incorrect as a matter of law by holding that Blanca's cellular service was unregulated. 47 C.F.R. § 20.15(a) explicitly provides that cellular carriers must comply with a number of statutory common carrier regulations including 47 U.S.C. § 201 (just and reasonable rates & practices regulation) and § 202 (nondiscrimination in charges and practices). Moreover, the FCC regulates cellular carriers under Parts 20 (e.g. E911; hearing aid compatibility) and Part 22 (cellular licensing and service rules). While states are preempted from regulating cellular rates, States can regulate rates as necessary to promote universal service and States can petition the FCC for rate regulation authority. 47 U.S.C. § 332(c)(3)(A). Cellular rates and services are regulated as a matter of law.

Third, the December 8 Order ignores the fact that the FCC's USF rules are filled with references to mobile systems being eligible for USF funding and there is no distinction drawn between "regulated" and "unregulated" assets. June 24, 2016 Petition for Reconsideration, at 4-5, 6-7, 17. Thus, Blanca's cellular service was a "regulated" service, but the FCC's rules do not contain a "regulated" asset limitation on receipt regarding the receipt of USF funds.

Fourth, the December 8 Order ¶ 4 states that Blanca is only entitled to receive USF "high-cost support based on their embedded costs in providing local exchange service to fixed locations in high-cost areas." The FCC does not directly respond to Blanca's argument that "there is no USF funding rule in the C.F.R. which limits USF funding to 'fixed' wireless service." June 24, 2016 Petition for Reconsideration at 4. The December 8 Order at fn. 6 points to two FCC decisions in support, however, neither of the cited cases discuss a "fixed location" requirement; one of the cases was released in 2012 and is not relevant to an examination of the rules in place during the 2005-2010 time period. Moreover, the FCC ignores 47 C.F.R. § 54.307(b) which provides that for purposes of USF funding for mobile systems "the 'service location' for a wireless/mobile subscriber for the purpose of USF funding calculation is the subscriber's billing address. 47 C.F.R. § 54.307(b)." June 24, 2016 Petition for Reconsideration at 5, 7, 17. For USF funding purposes, a wireless subscriber's service location is considered by rule to be a fixed location, namely the subscriber's billing address, by operation of the FCC's plainly stated rule. The FCC's failure to consider the fact that the FCC's USF rules "fix" the wireless subscriber to a specific fixed location renders the December 8 Order unreasoned.

Moreover, the December 8 Order fails to consider the FCC's history of cellular licensing. In 1992 the FCC proposed "to eliminate the restriction limiting fixed service to Basic Exchange Telecommunications Radio systems (BETRS)" to allow cellular to provide fixed BETRS service. Carriers were required to "comply with state certification requirements, if any." *In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Notice of Proposed Rule Making*,7 FCC Rcd. 3658, 3672 (1992); *see also* 47 C.F.R. § 54.207(a) (state commissions determine USF service areas). This rule change was adopted because the FCC had previously routinely granted waivers to provide the BETRS service using cellular technology. *In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, *Report and Order*, 9 FCC Rcd. 6513, 6571 (1994). The FCC recognized that "changes in technology have also made it desirable to provide carriers with greater flexibility to deal with new and changing circumstances while, at the same time, promoting the public interest." *In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, *Notice of Proposed Rule Making*,7 FCC Rcd. 3658 (1992).[9] The FCC clearly authorized Blanca's BETRS

[9] December 8 Order n. 35 "*See* Application at 24 (acknowledging that Blanca sought support for mobile services)." It is not clear what the FCC means by this reference. Cellular facilities are licensed under Part 22 entitled "Public Mobile Services," but as explained above, the FCC allows (continued...)

service using cellular technology by rule.

The FCC's rules do not require that the cellular/mobile handset be nailed to a wall to provide the BETRS service and for USF purposes § 54.307(b) subsequently fixed the "service location" of a cellular mobile subscriber at the subscriber's billing address. At that time Blanca was providing BETRS service using 150MHz/450 MHz BETRS licenses and commencing about 1995 Blanca began providing BETRS service using cellular technology. June 24, 2016 Petition for Reconsideration, at 11.

Fifth, December 8 Order ¶ 37 states that

> Blanca now asserts that it is a competitive ETC in areas served by a different incumbent LEC where it offered CMRS and, therefore, is entitled to support for such offering, the overpayments here related to study area 462182, in which Blanca was the incumbent LEC, not a competitive carrier. Moreover, Blanca has not produced any evidence that it has sought or obtained the requisite ETC designation for any other areas for, or expanded its existing designation to cover, these areas.

The December 8 Order ignores 47 C.F.R. § 54.201(d) which provides that as an ETC Blanca is

> eligible to receive universal service support in accordance with section 254 of the Act and, except as described in paragraph (d)(3) of this section, shall throughout the service area for which the designation is received***

June 24, 2016 Petition for Reconsideration, at 4 n. 3, 5, 7, 17. As discussed above, there is no rule prohibition against Blanca's provision of carrier of last resort services using CMRS facilities. Blanca's cell system was designed to provide service to its telephone exchange area and the FCC acknowledges that the cell system, in fact, provided exchange service to approximately 150 rural exchange subscribers, June 2 Letter at 2 n. 1, but these subscribers were incorrectly excluded from USF funding because they were classified as "mobile" subscribers. June 2 Letter at 3 ("Blanca was

---

[9](...continued)
cellular service providers to provide BETRS service using mobile service technology and licensing using the subscriber's billing address as the "service location" without a requirement that the cellular handset be nailed to the subscriber's billing address.

only providing *mobile* cellular service") (emphasis in original).

During the relevant time Blanca's cellular system served under 300 subscribers. Petition for Reconsideration, FCC 08-67, WT Docket No. 01-309, filed March 28, 2008, at 1. Blanca did not claim support for all subscriber loops, Blanca claimed support for those subscribers who used the cellular service in lieu of wireline telephone exchange service. However, the FCC has completely discounted Blanca's provision of common carrier of last resort service in withholding USF support relating to Blanca's telephone exchange service and is penalizing Blanca for its provision of that exchange service.[10]

Historically the Colorado the PUC did not strictly regulate telephone exchange service boundaries. *See e.g.*, Attachment at 00003, a 1998 letter from USWest to Blanca requesting that Blanca provide radio service to USWest's hard to serve subscribers in USWest's exchange area. Blanca provided the 1988 USWest letter to the Inspector General in 2009 in response to the *Subpoena*. Attachment at 0004. Therefore, the fact that Blanca has cellular coverage which extends beyond its Study Area is neither unusual nor a concern of the Colorado PUC, and a formal expansion of the Study Area is not required, because the goal is provision of service to rural, hard to serve subscribers and that is exactly what Blanca was doing. The FCC left it to state discretion regarding certification of exchange carrier services using cellular mobile technology. *In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, *Report and Order*, 9 FCC Rcd. 6513, 6571 (1994).

Sixth, December 8 Order ¶ 48 asserts that

the cost accounting framework embodied in the rule parts cited by OMD, i.e., Parts 36, 64,

[10] December 8 Order n. 95 discusses that in 2011 the Colorado PUC required LECs to form a separate wireless subsidiary to offer CMRS services. However, the time period involved in Blanca's case is 2005-2010 and predates that requirement – Colorado's 2011 separate subsidiary decision has no relevance except to show that prior to 2011 Blanca's service offering was properly structured.

> and 69 of the Commission's rules, make clear that under the Act and the Commission's rules, CMRS-related expenses are nonregulated expenses that could not be included in regulated accounts for purposes of NECA cost reporting.

Blanca criticized the June 2 Letter because it vaguely referred to rule part violations rather than citing specific rule violations. June 24, 2016 Petition for Reconsideration, at 1, 8 n. 4, 16-18, 22. December 8 Order ¶ 48's reference to Blanca's purported violation of a "framework" is just as vague, especially in light of the specific USF rule provisions Blanca cited which demonstrate that CMRS is eligible for USF funding. June 24, 2016 Petition for Reconsideration, at 4-5, 6-7, 17.

If the FCC intends to hold a company's feet to the fire, its rules need to clearly express what is required. However, the only explanation the FCC can muster is a reference to some vague "framework," a purported "framework" which is contradicted by the text of a number of the FCC's USF rules, USF rules which the December 8 Order fails to address. The FCC failed to provide clear notice of the purported "framework" prior to the 2005-2010 time period at issue.

Moreover, Blanca acted reasonably under the rules years before the issuance of the FCC's "framework" guidance announced in this case, a guidance which fails to discuss the relevant rules which Blanca cited and relied upon, June 24, 2016 Petition for Reconsideration, at 4-5, and which allow a common carrier of last resort to utilize cellular radio technology to promote universal voice service in a rural area. When Blanca was informed, circa 2012, to change the way it accounted for its cellular system it did so immediately, June 24, 2016 Petition for Reconsideration, at 13, 15, but absent guidance Blanca had no reason to believe in 2005-2010 that its position was incorrect and every reason to believe it was acting reasonably especially since USAC continued to issue USF payments to Blanca for years even while the FCC was auditing Blanca and after Blanca explained what it was doing. In the absence of an agency's pre-enforcement explanation of a regulation, a regulated entity's reasonable interpretation precludes the finding of a rule violation. *Gen. Elec. Co. v. United States EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995).

E. USF Is Not Federal Funding

The December 8 Order variously, and incorrectly, asserts that USF funding is either Federal funding, or Federal grant money, or Federal money paid under contract using the Federal Spending Power. December 8 Order ¶ 51 & nn. 28, 98, 108, 109, 113, 123, 148. USF money is none of these things. *U.S. ex rel Shupe v. Cisco Sys.*, 759 F.3d 379, 377-88 (5th Cir. 2014) holds that the FCC's Universal Service Fund program does not contain any Federal money for purposes of False Claims Act prosecutions. The Fifth Circuit determined that the USF is administered by a private organization (USAC), that the USF is funded by private companies, and that the USF is not funded by Federal tax money. *Shupe*, 759 F.3d at 387-88. Instantly, the FCC seeks recovery of USF funds under the purported authority of the DCIA of 1996 relating to USF fund monies which were paid to Blanca between the years 2005-2010. The FCC's June 2 Letter at issue instantly claims that USF monies were paid to Blanca in violation of the FCC's rules and are recoverable pursuant to the DCIA as a "Debt [] owed to the United States." June 2 Letter at 7. However, *Shupe* holds that the USF money the FCC seeks to recover from Blanca never belonged to the United States and those USF monies paid to Blanca, therefore, cannot constitute a "Debt [] owed to the United States." Because *Shupe* holds that USF monies are not Federal funds, the FCC is improperly utilizing the DCIA to recover non-Federal money from Blanca and the FCC's "debt" collection effort against Blanca is unauthorized.

Moreover, the Tenth Circuit holds that "NECA act[s] exclusively as an agent for its members and had no authority to perform any adjudicatory or governmental functions." *Farmers Telephone Company v FCC*, 184 F.3d 1241, 1250 (10th Cir. 1999). Because NECA/USAC are not authorized to "perform any . . . governmental functions," NECA/USAC's disbursement of USF monies to Blanca by NECA/USAC cannot be considered as having been concerned with the distribution of

Federal money. Because the disbursement of USF money to Blanca did not implicate any government function, the FCC's effort to recover that money under the DCIA of 1996 is unauthorized. The FCC was a party to the *Farmers* case and it is bound by the Court's determination in that case, more recent Federal District Court decisions are not better precedent.

In No. 17-1451, *In Re Blanca Telephone Company*, the FCC's December 27, 2017 Response at 8-9, claims that the subject matter of this case involves "a debt owed to the Commission." That is incorrect. The purported debt is not owed to the FCC/Commission, it is a "**DEBT OWED TO THE UNITED STATES**." June 2 Letter, at 1 (caps, bold and underscore in original).[11] There are at least two problems with the FCC asserting authority to collect debts on behalf of the United States. First, 47 C.F.R. § 1.1910(b)(2) authorizes the FCC to collect debts owed to "the Commission." The FCC has no authority under its rules to collect debts owed to the United States. The FCC must explain why its position regarding the entity receiving the purported USF debt has changed.

Second, Blanca's Fourth Supplement argues that the FCC is in a box. If the Commission were to order that Blanca must reimburse the USF through USAC, rather than make payment to the U.S. Treasury as ordered in the June 2 Letter, Attachment B, in an effort to make the USF fund a "victim" for the purpose of avoiding the statutes of limitations problem, that would effectively concede that there is no debt owed to the United States. In that scenario the FCC's DCIA of 1996 debt collection effort would be voided because the FCC would be determining that compensation is owed to a third party rather than determining the existence of a Federal debt. The DCIA of 1996 exists to collect debts owed to the United States, the statute is not a victim compensation statute and

---

[11] The last page of the June 2 Letter is a set of contains instructions regarding how to make payment to the US Treasury rather than the FCC.

FCC use of the DCIA of 1996 for third party compensation would be improper.

On the other hand, if the FCC adhered to its position in the June 2 Letter that USF money is Federal money payable to the U.S. treasury, then the Commission is seeking recovery of public money rather than seeking to compensate a victim, and the Commission is clearly involved in a penal rule enforcement effort which is subject to the statute of limitations. Furthermore, the punitive nature of the Commission's actions against Blanca would be highlighted were the Commission to amend the June 2 Letter and enter an order asserting that Blanca's purported rule violations were "continuing" in nature until the "debt" were paid. In fact, Attachment at 00001, FCC Form 159-B prepared by the FCC for Blanca, shows that the FCC is imposing additional penalties on Blanca and highlighting the penal nature of its action while ignoring the statute of limitations.[12]

In No. 17-1451 the FCC claims that the USF money is payable to the FCC, but no theory of direct agency recovery of USF funds was provided. The FCC does not collect USF funds and the FCC does not disburse USF funds. In any event, the FCC is a governmental unit and the penal nature of a USF collection by a governmental unit, i.e., there is no compensable victim, remains.

F. The Failure to Address the Record–Blanca's Accounting Disclosures

1. From the Investigation's Outset Blanca Told Investigators What it Was Doing

The lack of FCC reasoned decision making in this case is clearly exemplified by the fact that USAC paid out USF monies for Blanca's cellular system even while the FCC was auditing Blanca. If the purported cost accounting violations were "clear," December 8 Order ¶ 24, it would not have taken the FCC 11 years to issue a decision. In an effort to impute some level of wrong doing to Blanca to try to disappear this glaring hole in the FCC's analysis, the December 8 Order, ¶ 1 states that "in 2012, NECA *discovered* Blanca's improper inclusion in its rate base of nonregulated costs"

[12] 47 C.F.R. § 1.1910(b)(2) is penal on its face because it provides for the imposition of interest, costs, and other undefined "penalties."

(emphasis added) as if Blanca were concealing how it was accounting for cellular-related costs and that NECA's "discovery" was, therefore, profound.

Blanca was open about its accounting practices beginning in early 2008, a fact which is easily discernible examination of the FCC staff's own work product which was reproduced for the FCC's examination in the June 24 Petition for Reconsideration. The December 8 Order ignores information in the Inspector General's (IG) November 12, 2009 *Subpoena Duces Tecum*, especially Items 25-48, which reveals that the IG was probing, in minute detail, Blanca's cellular system cost accounting. Blanca was clearly telling the various auditors and investigators exactly what it was doing which, in turn, allowed the IG to probe the issue deeply. More than one-half of the IG's November 2009 *Subpoena* was devoted to covering Blanca's explanation that Blanca was including cellular system costs in its USF cost accounting reports. June 24, 2016 Petition for Reconsideration, Attachment 3 at 14-17 (the IG's November 2009 Subpoena). Blanca was open about its accounting procedures and that led to the IG's numerous inquiries and requests for a multitude of documents regarding how Blanca handled the cost accounting for the cellular system. In this case USAC was not the Matthew Henson of accounting and USAC "discovered" nothing in 2012, by then Blanca had been explaining its accounting methods to the FCC and its auditors and investigators for FOUR YEARS. The FCC's effort to paint this case as one where the FCC encountered difficulty obtaining relevant information from a reluctant company is unsupported by the record and is contradicted by information created by the FCC's own staff who examined the issue and the information Blanca provided.

2. Purported Waste, Fraud, and Abuse

In response to Blanca's observation that "the June 2 Letter does not find that Blanca made a single false statement or misrepresentation in more than eight years of investigation covering the eleven years back to 2005," June 24, 2016 Petition for Reconsideration, at 10, the December 8 Order ¶ 41 makes the absurd statement that "we find irrelevant Blanca's repeated emphasis on the fact that Blanca began a practice of misreporting costs to NECA in 2005." The December 8 Order then refers to certain pages of Blanca's Application for Review and Petition for Reconsideration as if Blanca's pleadings actually, and repeatedly, admit to misreporting costs. Blanca never emphasized that it had "a practice of misreporting costs to NECA;" the FCC's word play does not serve the public interest.

As discussed above, and in the earlier filed review pleadings, Blanca truthfully reported its costs in accordance with the text of the FCC's USF rules. Blanca hid nothing and Blanca was completely candid with its accounting practices from the outset of the FCC's investigation. Now, years later, the FCC tries to fault Blanca's accounting methods based upon a vague "cost accounting framework," December 8 Order ¶ 48, which the FCC opines that Blanca should have inferred even though the inference runs contrary to the text of the FCC's USF rules. Noteworthy is the fact that the FCC still does not assert that Blanca submitted any false information in any report or made any false statement in any oral or written response.[13]

Notwithstanding the fact that the December 8 Order completely fails to show that Blanca engaged in any wrongdoing over the course of the past 10+ years the FCC has been investigating Blanca, and notwithstanding the fact that the December 8 Order does not assign any error to the June 2 Letter for failing even to reference waste, fraud, abuse, or egregious wrongdoing, the December 8 Order states, without any support whatsoever, that this case involves waste, fraud, abuse, and

---

[13] December 8 Order fn. 96 reports that "Blanca never filed quarterly line counts on FCC Form 525, a requirement for recovering support as a competitive ETC pursuant to section 54.307(c)." The actual filing or non-filing of a report is not a content driven determination and it is assumed that if this were a significant issue then USF money would not have been paid to Blanca and the December 8 Order would do more than footnote the point. *See* 47 C.F.R. § 1.80(b)(8) (base forfeiture for failing to file a required form is $3000).

"egregious" wrongdoing by Blanca. December 8 Order, ¶¶ 10, 25, n. 106, n. 130, Statement of Commissioner Clyburn, Statement of Commissioner O'Rielly. Absent any evidence supporting these very serious charges, the FCC's statements are unreasoned at best. These words are not talismans which guide decision making in the absence of reasoning. The FCC is required to explain what it is doing, it cannot rule by fiat. At most, and in the FCC's own words, the FCC's case against Blanca amounts to the application of a "cost accounting framework," a profoundly vague proposition. December 8 Order ¶ 48. Blanca followed the express text of the FCC's USF rules during 2005-2010 regardless of what the FCC announces today as the "cost accounting framework." Blanca's clean hands are not "irrelevant," December 8 Order ¶ 41, to the FCC's baseless charges.

It is contrary to the public interest for the FCC to make extremely serious charges against a carrier and then utterly fail to support those charges. The FCC must explain how Blanca's provision of wireless common carrier of last resort service to rural Colorado, a service which clearly serves the USF's statutory purpose, constitutes waste, fraud, abuse, and amounts to "egregious" wrongdoing on a par with using USF funds to buy a vacation mansion in Southern France. Absent any such explanation, and in addition to amounting to an unreasoned, abusive, and outrageous finding by a Federal agency, it appears that the FCC is merely trying to serve a plate to the DoJ in support of its hitherto utterly unsupported false claims case which is waiting in the wings as part of an abusive governmental tag team effort, albeit one which is now subject to claim preclusion in view of the FCC's action. June 24, 2016 Petition for Reconsideration, at 10, 12 n. 11.

G. Blanca's Supplemental Pleadings

1. Blanca's Second Supplement and Fourth Supplement

The December 8 Order ¶ 27 accepts Blanca's Second Supplement (cellular service discontinuation notice) and Fourth Supplement (discussing the Supreme Court's *Kokesh* decision). However, the ordering clauses at December 8 Order ¶ 57 dismiss these pleadings as untimely.

Blanca assumes that the ordering clause ¶ 57 contains a drafting error, but reserves the right to respond if the FCC determines that it is ¶ 27 which is in error and the pleadings are, in fact, rejected.

2. Blanca's First Supplement and Third Supplement

The December 8 Order ¶ 28 rejects as untimely Blanca's First Supplement (discussing relevant FCC statements made after Blanca filed its FCC review pleadings and a non-obvious argument about the legal status of USF money) and Third Supplement (discussing USF cases which were released after Blanca filed its FCC review pleadings). With all due respect, the FCC's quibble about Blanca taking a little extra time to defend itself in a novel summary forfeiture proceeding which has no published procedures and which afforded Blanca no opportunity to present a case before the decision was made, and after subjecting Blanca to 10 years of investigation, is unfair and seems designed to reach a predetermined result. Certainly, there was no urgency on the FCC's part to process any debt claim against Blanca, and no prejudice resulted to the FCC, or to its ability to review this matter, or to the public interest, from Blanca's manner of proceeding.

From Blanca's perspective, on the other hand, this isn't a routine matter. The FCC is attempting to create a new kind of summary forfeiture proceeding and affording some procedural leeway in Blanca's favor, rather than draconian application of procedures, would be appropriate. Under these circumstances, it appears that the FCC is trying to hide its novel procedures from scrutiny. Blanca has a right to respond to the FCC rulings and statements which might be applied against Blanca. The FCC might wish to proceed in this case without subjecting its approach to examination, but Blanca is certainly within its administrative rights to challenge the FCC's reasoning while the instant case is pending. Blanca is not responsible for the circumstance that the FCC is issuing relevant statements after Blanca's petition for reconsideration filing deadline had passed. That said, even if the FCC is determined to have properly excluded Blanca's supplements, to the extent that the December 8 Order touches upon the matters Blanca raised in the supplements, Blanca is able to address those matters to exhaust its administrative remedies. *See Graceba Total Communications, Inc. v. FCC*, 115 F.3d 1038, 1041 (D.C. Cir. 1997) (issue properly reviewed by appeals court where the FCC rejected the supplement, but addresses the issue anyway).

H. Emergency Relief During Litigation Over the Existence of the Debt

47 C.F.R. § 1.1910(b)(3)(i) provides that the FCC will not use the §§ 1.1910(b)(2),(3) enforcement action of withholding action on applications or attempt to collect the debt while the existence of the debt is being litigated either at the FCC or in a "contested judicial proceeding." Blanca has received notices from USAC that its USF payments are being withheld even though the December 8 Order is not final and the existence of the debt is still being litigated. Blanca requests that its Red Light be turned back to green, that USAC be directed to make all USF payments to Blanca until there is a final order, no longer subject to administrative or judicial review, which imposes a payment obligation upon Blanca, and that USAC be directed to pay Blanca any USF monies which might have been withheld upon issuance of the December 8 Order and thereafter. As previously discussed, and as the FCC is able to see from Blanca's USF accounting, USF funding is critical to Blanca's provision of wireline carrier of last resort services to rural Colorado. Moreover, Blanca requests that its long pending license assignment application to AT&T (WPWU906 ULS File No. 0006996338) be processed and granted. The relief requested here should be provided immediately pursuant to the clear language of 47 C.F.R. § 1.1910(b)(3)(i).

I. Conclusion

WHEREFORE, the Commission should reconsider FCC 17-162, terminate the multi-year investigation of Blanca, and grant the financial and other relief Blanca has previously requested.

Respectfully submitted,
BLANCA TELEPHONE COMPANY

Timothy E. Welch
Hill & Welch
1116 Heartfields Drive
Silver Spring, MD 20904
(202) 321-1448
(301) 622-2864 (FAX)
welchlaw@earthlink.net

January 7, 2018

ATTACHMENTS

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
BILL FOR COLLECTION

Approved by OMB
3060- 0589

Bill Number	Applicant FRN	Current Bill Date
6USFBLANCATE	0003766201	06/02/2016

FOR INQUIRIES CALL
1-202-418-1995
(Revenue and Receivable Operations Group)

Application Information:

Blanca Telephone Company
1025 Connecticut Ave., N.W.
Suite 1000
WASHINGTON, DC 20036

Payable to:
Federal Communications Commission

Send a copy of this bill to:
Federal Communications Commission
Revenue & Receivables Operations Group
P.O. Box 979088
St. Louis, MO 63197-9000

Total Amount Due		Due Date
$6,903,165.53	**TOTAL AMOUNT DUE MUST BE RECEIVED BY**	07/05/2016

Payer FRN No.	**Please Complete The Payer Information, FCC Registration Number (FRN) is required**

Payer Name (if paying by credit card enter name as it appears on the card)

Address Line No. 1

Address Line No. 2

City State Zip Code

Daytime Phone Number (include area code)

Reason For Bill:

Call Sign/Other FCC ID	Payment Type Code	Quantity	Fee Due For (PTC)	Total Fee	FCC Code 1	FCC Code 2
	USF	1	0.00000	$6,748,280.00		
	DCIA			$22,119.36		
	PEN			$132,716.17		
	ADM			$50.00		
			TOTAL DUE	$6,903,165.53		

Please choose a method of Payment and complete the section if paying by Credit Card

Payment Method:

CREDIT CARD ☐ CHECK ☐ WIRE ☐ IPAC ☐ MIPR ☐

MASTERCARD ☐ DISCOVER ☐ VISA ☐ AMEX ☐

ACCOUNT NUMBER________________________ EXPIRATION DATE________________________

I hereby authorize the FCC to charge my Credit Card for the service(s) / authorization(s) herein described.

AUTHORIZED SIGNATURE________________________ DATE________________________

FCC FORM 159B JULY 2005

IF PAYING BY CHECK, PLEASE WRITE YOUR BILL NUMBER ON YOUR REMITTANCE AND ATTACH A COPY OF THIS BILL TO YOUR PAYMENT TO ENSURE PROPER CREDIT.

RESPONSE 33: There are no contracts.

Question 34: All documents constituting, referring or relating to tariffs under which Blanca undertook to provide services utilizing BETRS to customers.

RESPONSE 34: Blanca uses a Colorado tariff and is a member of NECA, thus using the NECA tariff. The NECA tariff may be found at neca.org.

Response34attachment has the following files:
"CostIssuesManual.pdf" –Cost manual created by NECA.
"Tariff1-4.pdf" – Blanca Tariff
"Tariff4b-6.pdf" – Blanca Tariff continue
"Tariff6a-9c.pdf" – Blanca tariff continue
"Tariff10-24.pdf" – Blanca tariff continue
"Tariff25-35.pdf" – Blanca Tariff continue

Question 35: All documents constituting a listing of customers of Blanca utilizing BETRS as of 12/31/06, 12/31/07, and 12/31/08. In lieu of such listing, the company may provide the billing records of customers of Blanca utilizing BETRS for the billing cycles that include 12/31/06, 12/31/07, and 12/31/08.

RESPONSE 35: See Response35Attachments-DVD for the list of customers:
The file " ListCustomersFtrs12-200YFtr11.pdf" contains Business customers for 200Y. The values for "Y" maybe 6, 7, and 8 designated the appropriate year.

The file "ListCustomersFtrs12-200YFtr1.pdf" contains Residential customers for 200Y. The values for "Y" maybe 6, 7, and 8 designated the appropriate year.

Question 36: All documents constituting, referring to, or relating to customer premises equipment which Blanca offered for sale or lease to its customers for BETRS, however such equipment was categorized or promoted by Blanca to the public, including, but not limited to: all invoices, bills of sale, service warranties, and any service agreements from equipment vendors or manufactures for each type of customer premises equipment.

RESPONSE 36: See Response36attachment for each check and invoice. The attachments have file name "CheckNumber.pdf". The number is the check number.

Question 37: All documents constituting all advertising in any form, including print, broadcast or web-based, for or including the service(s) categorized in the "current features count" provided by Blanca as "BETRS high Speed Internet".

RESPONSE 37: No documents exist.

Question 38: All documents constituting, or referring to contracts or other agreements to which Blanca is a party under which it undertook to provide the service(s) categorized in the "Current Features Count" provided by Blanca as "BETRS high Speed internet"

REPONSE 38: There are no such contracts.

Question 39: All documents constituting customer records of Blanca for those customers who received the service categorized in the "Current features count" provided by "Blanca as BETRS high speed internet".

USWEST

May 5, 1988

Mr. Alan Wehe
Blanca Telephone Company
P.O. Box 1031
Alamosa, CO 81101

Dear Alan,

I'm writing in response to our conversation last Friday regarding Rural Radio customers.

I am aware of several customers located in the Blanca exchange who have telephone service via a Mountain Bell radio tower located near you.

I am also aware there are customers located within a Mountain Bell exchange who could benefit from telephone service provided from your nearby tower. Any of these customers may choose to obtain local telephone service from the Blanca Telephone Company using you Rural Radio technology.

This letter is not intended to authorize any boundary changes or the construction of any facilities that cross the exchange boundary.

Please call if you have any questions.

Sincerely,

Ray Kent

Ray Kent

"FortGarland1024308.pdf" – Blanca Antenna Structure Registration
"Sanford1237700.pdf" – Blanca Antenna Structure Registration
"SanLuis1024241.pdf" – Blanca Antenna Structure Registration
"SanLuis1024309.pdf" – Blanca Antenna Structure Registration

Please refer to the FCC's ULS system for location information, system maps, and other licensing documents."

Question #2: All Documents constituting maps indicating Blanca's study area boundaries.

RESPONSE 2: Blanca does not maintain maps. Blanca's study area is:
The North boundary is the Northern county line for Costilla County
The Southern boundary is Road 19.5 also know as Cervantes Road in Costilla County
The Western boundary is 1 mile west of Valley Vista Road Boulevard in Alamosa County
The Eastern boundary is the eastern county line for Costilla County

Please see Response2Attachments-DVD:
"StudyAreaMaps.pdf" – A very old study area map that is on file at the PUC.
"USwest.pdf" – Letter from USWEST dated 1988
"CapulinContourMap.pdf" – contour map for Capulin
"SanLuisContourMap.pdf" – contour map for San Luis

Question #3: All Documents reflecting FCC approval(s) granted to Blanca (e.g. a study area waiver) relating to changes to the study area boundaries.

RESPONSE 3: Blanca has not asked for a study area boundary change.

Please see Response3Attachements – DVD
"RadioStationAuthorization.pdf" – Radio Station Authorization from the FCC
"RadioStationAuthorization1.pdf" – Radio Station Authorization from the FCC
"RadioStationAuthorization2.pdf"– Radio Station Authorization from the FCC
"RadioStationAuthorization3.pdf" – Radio Station Authorization from the FCC
"RadioStationAuthorization4.pdf" – Radio Station Authorization from the FCC
"RadioStationAuthorization5.pdf" – Radio Station Authorization from the FCC
"RadioStationAuthorization6.pdf" – Radio Station Authorization from the FCC
"RadioStationCapulin.pdf" – Radio Station Authorization from the FCC
"RadioStationcostilla1.pdf" – Radio Station Authorization from the FCC
"RadioStationcostilla.pdf" – Radio Station Authorization from the FCC
"RadioStationLaJara.pdf" – Radio Station Authorization from the FCC

Please refer to the FCC's ULS system for location information, system maps, and other licensing documents.

Question #4: All Documents constituting maps indicating the ETC boundaries approved by the appropriate regulatory authority in Blanca's application for ETC authorization.

RESPONSE 4: Blanca does not maintain maps.

Please see Response4Attachments-DVD
"StudyAreaMaps.pdf" – A very old study area map that is on file at the PUC.